

**URBAN AND RURAL PLANNING ACT, 2000**

**Section 40-46**

<https://www.assembly.nl.ca/legislation/sr/statutes/u08.htm#40>

Appeal #: 15-006-077-011 and 15-006-077-013

Adjudicator: Mary Bishop

Appellant(s): Harry Murphy

Emlene Murphy

Respondent/Authority: Town of Placentia

Date of Hearing: October 26, 2023

Start/End Time : 10:30am – 12:00pm

**In Attendance**

Appellant: Harry Murphy

Appellant Representative(s): Timothy Young, Curtis Dawe for Emlene Murphy

Respondent/Authority: Town of Placentia

Respondent Representative(s): Mary Greene, CAO (Acting)

Proponent/Developer: Jeff Griffin, Municipal Enforcement Officer (MEO)

Appeal Officer: Robert Cotter, Departmental Program Coordinator,  
Municipal and Provincial Affairs

Technical Advisor: Faith Ford, Planner III, Department of Municipal and  
Provincial Affairs

**Adjudicator's Role**

Part VI of the *Urban and Rural Planning Act, 2000* authorizes adjudicators to hear appeals and establishes the powers of adjudicators.

In the matter of Appeal **No. 15-006-077-011**, the role of the Adjudicator is to determine if the Authority acted in accordance with the *Urban and Rural Planning Act, 2000*, the *Municipalities Act, 1999*, and the Town of Placentia Municipal Plan and Development Regulations when it issued a Removal Order to cease all work and submit the appropriate application to the Town for development at 198-202 Harbour Drive on June 16, 2022.

In the matter of Appeal **No. 15-006-077-013** the role of the Adjudicator is to determine if the Authority acted in accordance with the *Urban and Rural Planning Act, 2000*, the *Municipalities Act, 1999*, and the Town of Placentia Municipal Plan and Development Regulations when it

issued a Restoration Order to reverse all excavation work and restore the property to its original state at 198-202 Harbour Drive on June 24, 2022.

**At the beginning of the Hearing, all parties agreed that the two appeals be heard together as they pertain to the same property and issue. It was agreed that the Hearing would first address Appeal No. 15-006-077-011, and then move on to address matters raised in Appeal No. 15-006-077-013.**

## **Appeal No. 15-006-077-011**

### **Hearing Presentations**

All parties being in agreement on the process for the hearing, the Adjudicator proceeded to hear the matter that is the subject of appeal No. 15-006-077-011.

### **Technical Advisor**

The role of the planner is to act as a technical advisor to the appeal process and act as an expert witness as outlined in the Appeal Board (Rules of Procedure) Order, 1993. 10. The Hearing shall proceed in the following manner:

- (a) there shall be a technical advisor to the Board who shall provide data relative to the Municipal Plan or other Scheme in effect and an interpretation on whether or not the proposal under appeal conforms, is contrary to, or could be discretionarily approved pursuant to the Municipal Plan, Scheme or Regulations in effect ...

At the hearing, the Technical Advisor outlined her report noting that on June 21, 2021, the Authority (Town of Placentia) issued a permit for the construction of a wooden fence at 198-202 Harbour Drive. This permit was an extension of a fence permit that had been previously issued by the Authority in November 2018.

On June 16, 2022, the Authority became aware of excavation, infilling, and backfilling activity occurring on the subject property. Staff visited the site and advised the Appellant that they must stop work. Staff explained the fence permit does not include excavation, infilling, and backfilling of the property and advised the Appellant a separate permit was required to carry out the work. The Appellant continued to carry work on the property, and on that same day, the Authority issued a Removal Order to the Appellant ordering them to cease all work and submit the appropriate application to the Town for the development. The Appellant filed the appeal on June 23, 2022.

The Technical Advisor stated that both the excavation, infilling, and backfilling of land, and the construction of a fence, fall within the definition of development as defined in Section 2(c) and 2(g) of the *Urban and Rural Planning Act, 2000*. She outlined the provisions of the Town's Development Regulations that require permits for development generally, and for fences specifically. She noted the *Town of Placentia Occupancy and Maintenance Regulations*, established under Section 414(1)(d) of the *Municipalities Act*, also require a permit for construction.

The Technical Advisor presented information regarding procedural compliance with respect to the Removal Order issued by the Authority. While it was not indicated on the Order, the Authority's submission materials indicate that the Order was issued to cease excavation, backfilling, and infilling work occurring without a permit. While there was a valid permit in place for the construction of a fence, there was no Development Permit issued for excavation, backfilling, and infilling activity on the subject site.

The Order was issued under Section 404(1) (b) of the *Municipalities Act, 1999*. The Technical Report raises questions about the applicability of this Section which states:

*404.(1) A council may make an order that*

*(b) the owner or occupier of a property stop construction, fill in, remove or alter a privy, septic tank, sewer, sewer system, well or water system,*

*(i) not constructed in accordance with or under a permit issued by that council, or*

*(ii) located or constructed so that it is or may be a danger to public health.*

The Technical Advisor described sections of the *Municipalities Act* pertaining to the issuing and serving of Orders and noted that the Town did not exercise their authority to issue an Order under Section 102 of the *Urban and Rural Planning Act, 2000* which states:

*102. (1) Where, contrary to a plan or development regulations, a person has undertaken or commenced a building or other development, the council, regional authority or authorized administrator responsible for that plan or those regulations or the minister where the minister considers it necessary, may order that the person pull down, remove, stop construction fill in or destroy that building or development and may order that the person restore the site or area to its original state.*

The Technical advisor also noted that the order was not addressed to an individual or property owner, rather it was addressed "To whom it may concern", and delivered to the appellant who was working on behalf of the property owner. She also indicated that based on the information received from the Town, there is no evidence of any Council motions concerning the Order either before or after it was issued.

### **Appellant's Presentation**

The Appellant stated that the work being conducted on the property was part of the work required for the construction of the fence, for which he had a valid permit. Under questioning from the Adjudicator, he indicated that the fence was to be of wood construction consisting of posts and two rails, along one side and part of the rear boundary of the property. He also indicated that considerable excavation was necessary to enable machinery to access the property boundary to install the fence, including the bringing in of eight (8) tandem loads of fill.

He explained photos that were included in materials submitted by the Authority showing the excavation that had been occurring along the property boundary as part of the effort to construct the fence.

### **Authority's Presentation**

The Authority indicated that they had received a complaint concerning excavation on the property. Upon a visit to the property to investigate, the MEO concluded that the nature of the excavation, including the placement of a significant amount of fill being brought to the site, exceeded that which could be reasonably associated with the construction of the fence.

He stated that he spoke with the Appellant about the matter, returned to the Town office and prepared the Order which was signed by the Mayor and then delivered to the Appellant.

Under questioning from the Adjudicator, the Authority indicated that the development activity occurring at the property was not related to any onsite septic, sewer or well and that in hindsight, they believe they should have issued the Order under Section 102 of the *URPA, 2000*.

### **Adjudicator's Analysis**

This following questions arise from this appeal:

**1. Did the Town have the authority to determine that the excavation being conducted on the site was development that could not reasonably be considered necessary for the construction of the fence for which there was a valid permit in place;**

Yes. Examination of the application for the fence provides little information about what was intended in constructing the fence. A sketch shows a simple wooden rail fence but no indication of where the fence is to be placed, or the nature of any excavation that would occur. Photographs provided by the Authority showed considerable excavation taking place. In addition, the Appellant indicated that a significant amount of fill was also being brought onto the site.

The Town, under its Development Regulations, has the authority to require a permit for any work that constitutes development. In this case, the Town had the authority to determine whether the activity on the property was outside the scope of what had been approved for the construction of the fence and to require the appropriate plans to be submitted, reviewed and permits issued prior to any work taking place. It also had the authority to issue orders for the work to cease until applications for the intended work were submitted and approved.

**2. If yes, was the Order issued by the Authority in accordance with the applicable legislation and Town regulations?**

No. I find that the Authority erred in issuing the Order under Section 404 (1) (b) of the *Municipalities Act* which refers to *a privy, septic tank, sewer, sewer system, well or water system,*

- (i) not constructed in accordance with or under a permit issued by that council, or*
- (ii) located or constructed so that it is or may be a danger to public health.*

The development is not concerned with *a privy, septic tank, sewer, sewer system, well or water system*. The work is considered development, and therefore, this section of the *Municipalities Act* does not apply. By its own admission, the Authority agrees that the Order should have been issued under Section 102 of the *URPA, 2000*.

### **3. Was the Order properly addressed and served?**

No. Having issued the Order under Section 404 of the *Municipalities Act*, the Authority failed to follow the requirements of Section 406 of the Act which specifies in Section 406(1), that an Order must be addressed to whom delivery or service is to be made. Instead the Order is addressed “To whom it may concern”.

## **Appeal 15-006-077-013**

**At this point, the matters concerning Appeal No. 15-006-077-013 were heard.**

### **Technical Advisor**

The Technical Advisor provided the background on the Order under this appeal. Following the issuance of the first Order - Removal Order - on June 16, 2022, concerning the excavation, infilling, and backfilling activity occurring at 198-202 Harbour Drive, the Town became aware that excavation work had continued after the Order was issued. An appeal of the first Order was filed on June 23, 2022.

On June 24, 2022, the Authority issued a second Order – a Restoration Order - to the Appellant ordering that all excavation work undertaken in contravention of the Order dated June 16, 2022 be reversed and that the property be restored to its original state as it had existed before the excavation work began. On that same day, the Authority’s lawyer sent a letter to the Appellant regarding compliance with the Orders and pending court action. The Appellant filed an appeal of the Restoration Order on July 8, 2022.

The Technical Advisor in discussing the sequence of events, noted that the Authority may not have been aware of the first appeal filed on June 23, 2022 when they issued the second Order on June 24, 2022.

The Technical Advisor indicated that the Restoration Order that is the subject of the second appeal was issued under Sections 102(1) and 102(5) of the *Urban and Rural Planning Act, 2000* and Sections 159(1), 404(1)(k), and 404(5) of the *Municipalities Act, 1999*. Both Sections 159(1) and 404(1)(k) of the *Municipalities Act, 1999* reference storm drainage, water and sewage systems. The submission materials did not provide sufficient information to determine whether there is a ditch, culvert, drain or other connection to a water or sewer system on the subject property where the excavating activity occurred.

With regards to procedural compliance, the Technical Advisor stated that the requirements for serving an Order under the *Urban and Rural Planning Act, 2000* are set out in Section 107 of the Act and Section 406 of the *Municipalities Act*. The Authority’s submission indicated the Order was sent to the Appellant, via registered mail on June 24, 2022. The Order was also personally delivered to the Appellant’s relatives, who were carrying out the work on her behalf at their personal residences on June 24, 2022.

It was also noted that the Order contained notice of the right to appeal and information on the appeal period in accordance with Section 18 of the Town's Development Regulations.

The Technical Report describes the requirements of the *URPA, 2000* with respect to the delegation of authority for the issuing of Orders. The Order was issued by the Town's CAO. Under section 109 (4) of the Act which states:

*(4) An order made by an employee referred to in subsection (3) shall be confirmed by a majority vote of the members of the council or regional authority present at the next meeting of that council or regional authority after the order is made and if the order is not confirmed in this manner, it shall be considered to be cancelled.*

The Technical report noted that there was no information to indicate that the Council had confirmed the Order.

### **Appellant Presentation**

The Appellant's representative outlined the grounds for Appeal as follows:

- The Restoration Order did not outline how the excavation work was not within the scope of the fence permit;
- The excavation activity was for the purposes of building a fence on the property;
- The Town mis-cited its authority in issuing the first Removal Order as it cited s.404(1)(b) of the *Municipalities Act, 1999* though the work did not involve a privy, septic tank, sewer, sewer system, well or water system and therefore the Authority did not have authority to issue the Removal Order; and
- The Restoration Order issued by the Town bases its authority on the Appellant's failure to comply with the Removal Order, and as that Removal Order was issued incorrectly the Town does not have authority to issue the Restoration Order.

The second appellant to whom the order had been delivered, presented further information on how regrading of property adjoining the subject property had affected drainage in the area. He indicated that he was being unfairly treated by the Town with regards to the work he was doing on the subject property.

As a summary, Counsel for the Appellant indicated that the property owner only seeks to find a way to erect a fence and move forward with the quiet enjoyment of her property.

### **Authority's Presentation**

The Authority, in its presentation, indicated that on June 24, 2022 when it issued the Restoration Order, was unaware that an appeal of the first Removal Order had been filed.

They also indicated that the order was not related to any issues concerning a ditch, culvert, drain or other connection to a water or sewer system on the subject property where the excavating activity occurred.

Under questioning by the Adjudicator, the Authority also indicated that the Removal Order had not been confirmed by a resolution of Council

### **Adjudicator's Analysis**

Based on the information presented at the Hearing, the Authority issued the Restoration Order under Section 102 of the *URPA, 2000*, as well as Sections 159(1) and 404(1)(k) of the *Municipalities Act, 1999*, and referenced the Removal Order, issued on June 16, 2022.

While I find that issuing the Restoration Order under section 102 of the *URPA, 2000* was correct, I find that reference to Sections 159 (1) and 404(1) (k) of the *Municipalities Act* do not apply in this case.

Furthermore, in issuing the Order under Section 102 of the *URPA, 2000*, the Authority failed to comply with Section 109 (4) of the Act which requires Orders made by an employee to be confirmed by Council. Where an Order is not confirmed by Council it shall be considered to be cancelled.

### **Decisions of adjudicator**

As Adjudicator, I am bound by Section 44 of the *URPA, 2000*, which states:

44. (1) In deciding an appeal, an adjudicator may do one or more of the followi
  - (a) confirm, reverse or vary the decision that is the subject of the appeal;
  - (b) impose conditions that the adjudicator considers appropriate in the circumstances; and
  - (c) direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have the adjudicator's decision implemented.
- (2) Notwithstanding subsection (1), a decision of an adjudicator shall not overrule a discretionary decision of a council, regional authority or authorized administrator.
- (3) An adjudicator shall not make a decision that does not comply wit
  - (a) this Act;
  - (b) a plan and development regulations registered under section 24 that apply to the matter being appealed; and
  - (c) a scheme, where adopted under section 29.
- (4) An adjudicator shall, in writing, notify the person or group of persons who brought the appeal and the council, regional authority or authorized administrator of the adjudicator's decision.

## Order

Concerning Appeal No. 15-006-077-011 the Adjudicator upholds the Appeal and orders that the Removal Order issued by the Town of Placentia, June 16, 2022 to cease all work and submit the appropriate application to the Town for development at 198-202 Harbour Drive be reversed. That is to say, the Order that was issued is no longer in effect.

Concerning Appeal No. 15-006-077-013 the Adjudicator upholds the Appeal and orders that the Restoration Order issued June 24, 2022 to Emlene Murphy and Harry Murphy to reverse all excavation work and restore the property to its original state at 198-202 Harbour Drive be reversed. That is to say, the Order that was issued is no longer in effect.


Any further Orders with respect to the property should be issued under the appropriate sections of the relevant legislation and in accordance with the Town's Development Regulations.

The Authority and the Appellant(s) are bound by this decision.

In accordance with section 45(2) of the *Urban and Rural Planning Act, 2000*, the Adjudicator further orders the Authority pay an amount of money equal to the appeal filing fee of \$230.00 for each of the two appeals, to the Appellants.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Adjudicator may be appealed to the Supreme Court of Newfoundland and Labrador on a question of law or jurisdiction. If this action is contemplated, the appeal must be filed no later than ten (10) days after the Adjudicator's decision has been received by the Appellant(s).

DATED at St. John's, Newfoundland and Labrador, this 7<sup>th</sup> of November, 2023.



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Mary Bishop, RPP, MCIP, FCIP  
Adjudicator  
*Urban and Rural Planning Act, 2000*